

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

May 2004

SCOPE OF EMPLOYMENT

The determination whether an educator is acting within the scope of his or her employment has important legal implications for the educator, the employer and anyone affected by the educator's activities.

For instance, a school or district can be immune from liability for an educator's bad acts if he or she is acting outside the scope of employment.

Sexually harassing students, for example, is outside of any educator's employment and an educator sued for harassment may not be able to claim governmental immunity for his or her actions.

Educators may also find themselves terminated from employment for acts outside the scope of their duties but committed while performing their duties

In Simpson v. Alanis, (Tex. App. 2004) a teacher was terminated for buying beer during his contract time. The teacher drove a district vehicle to run some errands before a scheduled soccer clinic,. One of his errands was to buy beer, which he took home before the clinic. There was no allegation the teacher drapk a beer

the teacher drank a beer during his contract time. But the district terminated his employment after a local citizen reported seeing him buy the beer and drive away in the district vehicle.

The educator admitted buying beer on school time was "dumb," but sued for wrongful termination. The court upheld the district's determination that he possessed alcohol while working in the scope of his employment.

This is similar to a Utah case where a teacher, whose license had been suspended for DUI, was arrested again, in a district car. Again, termination was warranted.

On the other hand, educators who are found to be acting within the scope of their duties can claim immunity from liability if they are sued for their actions.

A teacher whose grading practices are challenged in court, for example, may not be personally liable to a disgruntled student. If the teacher's grading practices are reasonable within the school or district policy, the teacher is acting within the scope of employment and has the protection of governmental immunity.

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UPPAC Cases of the Month

What should an educator who is under investigation by the Professional Practices Advisory Commission do about employment?

Often, an educator comes before the Commission after being terminated or resigning in the face of termination from a school district. The educator may then start looking for a new position in education.

If the Commission decides to investigate an educator's conduct, however, it will "flag" the educator's CACTUS file. This means that a potential employing school district will encounter a warning box informing the person looking for the educator's license

status to contact UPPAC before proceeding.

When the district calls, it is informed that the educator is being investigated for alleged misconduct.

On some occasions, a district will continue to review the educator's file for possible employment. But district's that do so

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UPPAC CASES

- The Utah State Board of Education accepted a two year suspension of Walter A. Carmona's license. Mr. Carmona failed to maintain appropriate boundaries with a female student.
- The Professional Practices
 Commission agreed to a one
 year probationary term for
 Harold A. Stone. Mr. Stone
 entered into a 12-month plea
 in abeyance in Eighth District
 Court following an altercation
 with his teenage son.

Eye On Legislation

Votes of your state legislators on education issues:

H.B. 115 Carson Smith Special Needs Scholarship: Provide publicly funded scholarships to special needs students who choose to attend private schools.

Reps. **voted for**: Aagard, Adams, Alexander, S. Allen, Barrus, Bennion, Bird, Bryson, Bush, Buttars, Buxton, Christensen, D. Clark, S. Clark, Curtis, Dayton, Dee, Dillree, Donnelson, Dougall, Ferrin, Ferry, Frank, Harper, Hughes, E. Hutchings, B. Johnson, Kiser, Last, Lockhart, Love, Morley, Murray, Newbold, Peterson, Philpot, G. Snow, Thompson, Ure, Urquhart, Wallace, Webb, M. Stephens

Voted against: Reps. Anderson, Becker, Biskupski, Bourdeaux,

Bowman, Buffmire, Cox, Daniels, Duckworth, Dunnigan, Goodfellow, Gowans, Hansen, Hardy, Hendrickson, Hogue, Holdaway, Jones, King, Lawrence, Litvack, Mascaro, McCartney, McGee, Morgan, Moss, Pace, Seitz, Shurtliff

Absent or not voting were: Reps. Bigelow, Noel, Styler.

Senators **voted for**: Sens. Bell, Blackham, Bramble, Buttars, Eastman, Hatch, Hellewell, Hickman, Jenkins, Killpack, Knudson, Stephenson, Thomas, Valentine, Walker, Wright, Mansell

Voted against: Sens. Allen, Arent, Davis, Dmitrich, B. Evans, J. Evans, Hale, Mayne, Absent or not voting: Sens. Gladwell, Hillyard, Julander, Waddoups

H.B. 271 Tuition Tax Credits:

Voted for: Reps. Alexander, Barrus, Bennion, Bryson, Bush, Buttars, D. Clark, S. Clark, Curtis, Dayton, Dillree, Donnelson, Dougall, Ferrin, Frank, Harper, Hughes, E. Hutchings, B. Johnson, Kiser, Lockhart, Love, Mascaro, Morley, Newbold, Peterson, Philpot, Thompson, Urquhart, Wallace, M. Stephens

Voted against: Reps. Aagard, Adams, S. Allen, Anderson, Becker, Bigelow, Bird, Bourdeaux, Bowman, Buffmire, Buxton, D. Cox, Daniels, Dee, Duckworth, Dunnigan, Ferry, Goodfellow, Gowans, Hansen, Hardy, Hendrickson, Hogue, Holdaway, Jones, King, Last, Lawrence, Litvack, McCartney, McGee, Morgan, Moss, Murray, Pace, Shurtliff, G. Snow, Styler, Webb

Recent Education Cases

A teacher's personal belongings, even those in a locked cabinet, can be searched once the teacher has been suspended.

This issue arose in Shaul v. Cherry Valley Springfield Central Sch. Dist. (C.A.2(N.Y.) 2004). Following his suspension, for sexually harassing a student, Shaul was told to turn in his keys and given two chances to clear out his personal stuff. He refused the first opportunity and was unable to clear

out all of his personal items in the time allotted for his second opportunity.

The court ruled, first, that the teacher had no expectation of privacy in his classroom once he was suspended. Further, school personnel had reasonable suspicion of the educator's actions toward a student to justify a search of the teacher's personal belongings.

Second, the court ruled Shaul had no property right to any materials

he composed in support of his teaching duties (i.e., tests, notes, etc.)

Third, Shaul's allegations that items were missing from boxes of his personal belongings delivered to his home were due to nothing more insidious than negligent maintenance. Negligence is not enough to support a violation of Shaul's due process rights.

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UPPAC cases cont.

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face the very real possibility that a brand new hire may have his or her license suspended or revoked, leaving the district without a necessary teacher.

Plus, the district may have lost the opportunity to employ an educator who is not being investigated for misconduct.

Educator's who are under investigation for misconduct in the classroom may search for employment in education. There is no legal ramification for doing so, though there



may be some ethical concerns. But educators who do so should be aware that, when it hears an educator under investigation is seeking employment, the

Commission will inform potential employers of the investigation. The Commission will not provide details regarding the evidence for or against the educator, but it will let district officials know the general allegations against the educator.

And educators facing an investigation should be aware that honesty before potential employers will be viewed in a far more positive light by the Commission than attempts to deceive potential employers.

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UPPAC Member Profile—

Jean Tonioli is a 3rd grade teacher at South Clearfield Elementary. She has taught in Davis County for 14 years.

Before coming to Utah, Jean taught reading in Las Cruces, New Mexico and was the Title I coordinator for one year in Soda Springs, Idaho.

Jean was born in Canada. She and her husband, Robert, both graduated from BYU at the same time and they have lived in several different places following his career in the U. S. Forest Service.

For 10 years, Jean stayed home to

raise her four children; the youngest is a senior in high school. In

March, the newest addition to their family was born—a grandson.

Jean has enjoyed the chance to "give something back to the education community" through her service on the Commission. As a member of



Jean Tonioli

the Commission, she bases her de-

cisions on "what is best for children" and expects teachers to treat children with respect and accept their responsibility to act as role models for children.

Like so many of her colleagues, Jean is a lifetime learner and is pursuing her Master's degree in Curriculum and Reading Endorsement at Weber State University.

In her spare time, Jean enjoys reading, cooking and doing things with her family.

Your Questions

Q: Are educators obligated by law to report to parents that their child may be using illegal drugs? If our knowledge comes from a conversation with another parent, must we divulge the source?

State law does require that educators notify parents when a student speaks to them about certain issues, including sex, drug or alcohol use, potentially criminal activities—from shoplifting to gang participation. The law does not, however, require that educators notify par-

What do you do when...?

ents when another parent or student suggests a child may be engaged in dangerous behavior.

However, parents have successfully sued schools where an employee had reason to believe a student was in danger and did not in-

form the parents.

The short answer, then, is that the educator should use his/her best professional judgment. If the educator has reason to suspect the information she receives from another parent could be accurate, the educator has a good basis for telling the parent of the student.

If, on the other hand, the educator has reason to doubt the motives of the parent (or student or teacher or anyone else) who is making the

Recent Cases Cont.

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An educator's rights were further defined in <u>Daubenmire v. Sommers</u> (Ohio App. 12 Dist. 2004). A high school football coach sued various administrators and members of the public for defamation.

The coach had been the subject of a contentious campaign to have him removed from his position. The assistant principal sought the coach's termination for continually failing to follow school policies and refusing to reveal the names of students who admitted using drugs.

Parents formed a group to assist in

the termination, citing Daubenmire's propensity to proselytize at



football meetings and regularly inviting clergy to lead prayers with the players.

Daubenmire responded to the efforts by appearing on a

Christian talk radio program and agreeing to be the subject of a front page news story. He was also later pictured in the sports page wearing a school baseball hat and holding a Bible in one hand and a football playbook in the other.

The court ruled that given the public controversy surrounding Daubenmire and his participation in the radio and newspaper publicity, Daubenmire became a public figure, albeit for a limited purpose.

As a limited purpose public figure, Daubenmire could not succeed on his defamation claim without showing actual malice by the various defendants. The court found no evidence of actual malice.

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

(Continued from page 3)

claim, the educator may want to hold off on calling the parent until and unless the educator has some other reason to believe the information is legitimate.

Either way, there is nothing in the law requiring that the educator also notify the parent of the source of the information. The only time an educator is required to divulge a source is when the educator receives a subpoena requesting that information.

If you are faced with a situation like this, bear in mind that courts do not punish educators who make reasonable efforts to do what they believe, in their best professional judgment, is right for the student.

You do not have to be allknowing, in the view of the courts, but you should do what you think is best given your years of experience and your experience with the particular student.

Telling a parent that a child may be using illegal drugs will probably not result in a pleasant conversation. Being wrong about the allegation may drive the wedge be-



tween the educator and the parent even deeper.

Far worse, however, is not telling the parent about an allegation and then finding out the allegation is true only after the student is seriously harmed. (Additional information can be found in U.C. 53A-13-101.)

Q: When a student's parents present an official name change for the student, must the school/ district change all records to reflect the new name and eliminate the student's prior name?

A: No. Schools should, of course, use the student's legally changed name for all records from the date of the change, but the school does not have to, and should not, eliminate the student's name from all records.

If the school does choose to eliminate the prior name from the records, it should at least note within the record why and when the name changed.

Teachers may wish to do the same for their classroom records.